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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-187795

DATE: October 12, 1977

MATTER OF: Con-Chen Enterprises

DIGEST:

1. Where bid for refuse collection and disposal services omitted price for one of 84 work items for first year option for basic services and prices for basic contract period and second year option were identical for same work, and bidder for 27 other work items inserted same price for each of three 1-year periods, thereby showing consistent pricing pattern, bidder may be permitted to cure omission as rule requiring rejection as nonresponsive does not apply where bid, as submitted, indicates probability and nature of error and amount intended.
2. Contention is made that bidder "has policy of hiring illegal aliens." To extent that contention relates to bidder's integrity, our Office, with exceptions not applicable here, no longer reviews affirmative determinations of responsibility, and to extent contention involves possible criminal activity, matter is properly for referral to Department of Justice.

Con-Chen Enterprises (Con-Chen) protests the proposed award of a contract to Auburn-Placer Disposal Company (Auburn) under invitation for bids (IFB) F04699-76-09267, for refuse collection and disposal at McClellan Air Force Base (AFB), California. The IFB contained four pricing schedules. Schedules I and II each contained 13 different work items to be priced for a basic 1-year and two 1-year option periods. Schedules III and IV each had one work item to be priced for similar time periods as schedules I and II.

Con-Chen contends that Auburn's bid is nonresponsive for failure to enter the unit price for schedule I, item 0014, and that Auburn has a regular policy of hiring illegal aliens.

The record discloses that the apparent low bidder, Auburn, had failed to enter a unit or total price for schedule I, item 0014, the basic work item for the first year option. The services called

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for in schedule I, item 0014, were the same as those called for in items 0001 (the basic contract period) and 0027 (the second year option). Auburn entered the same prices for the basic contract period year and the second year option--a unit price of \$4,709.76 and a total price of \$244,907.52. Items 0001 and 0027 are identical in terminology and requirements to item 0014.

The Air Force, in reliance on our decision reported in 52 Comp. Gen. 604 (1973), contends that Auburn's bid is responsive stating that it clearly establishes both the existence of the error in its bid and the bid intended. In the cited case, our Office held that an apparent low bidder may correct a price omission alleged prior to award, on an item which might or might not be ordered under the resulting contract, if the erroneous bid itself establishes a definite and easily recognizable pattern of prices which clearly indicates not only that the alleged error is anomalous to the pattern, but also that the intended figure is one which is solely compatible with the pattern. The Air Force states that this discernible pattern of bidding and the subsequent confirmation by Auburn are sufficient to support the contracting officer's determination to permit correction of an apparent clerical mistake in accordance with Armed Services Procurement Regulation (ASPR) § 2-406.2 (1976 ed.).

In response to the Air Force report, Con-Chen contends that the discernible pattern concept discussed in our above-cited decision is not the issue, which it contends is that Auburn failed to comply with paragraph C-60 of the "Instruction, Conditions and Notices to Bidder," which provides:

\ "C-60. ALL OR NONE: Award will be made on an 'All or None' basis for the schedule or Schedules to be awarded (See Section D-13) to the responsive, responsible bidder proposing to furnish at the lowest aggregate price on this Invitation for Bid. Failure to bid on all items will result in the bid being non-responsive. Although award is on an 'All or None' basis bidders must indicate a unit and

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total price for each item. A separate bid price for each item is essential for Government administrative purposes." (Emphasis supplied.)

We believe our decision in 52 Comp. Gen. 604, supra, is applicable here. In that case we stated:

"A fundamental rule of the competitive bid system is that in order to be considered for an award a bid must comply in all material items with the IFB at opening. 46 Comp. Gen. 44,435 (1966); B-162793, January 18, 1968. The bidder cannot add to or modify the bid after opening to make the bid comply with the IFB, and it does not matter whether an error is due to inadvertence, mistake or otherwise. B-161950, November 2, 1961. The question of responsiveness of a bid is for determination upon the basis of the bid as submitted and it is not proper to consider the reasons for nonresponsiveness. B-148701, June 27, 1962.

"A bid is generally regarded as nonresponsive on its face for failure to include a price on every item as required by the IFB and may not be corrected. B-176254, September 1, 1972; B-173243, July 12, 1971; B-165769, January 21, 1969; B-162793, supra; B-161929, August 28, 1967. The rationale for these decisions is that where a bidder failed to submit a price for an item, he generally cannot be said to be obligated to perform that service as part of the other services for which prices were submitted. B-170680, October 6, 1970; B-129351, October 9, 1956.

* * * * *

"Our Office has recognized, however, a very limited exception to these rules, and it is upon this exception that the Air Force recommends the

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correction of Hewlett-Packard's bid as permitted to stand. Basically, even though a bidder fails to submit a price for an item in a bid, that omission can be corrected if the bid, as submitted, indicates not only the probability of error but also the exact nature of the error and the amount intended. B-151332, June 27, 1963. The rationale for this exception is that where the consistency of the pricing pattern in the bidding documents establishes both the existence of the error and the bid actually intended, to hold that the bid is nonresponsive would be to convert what appears to be an obvious clerical error of omission to a matter of nonresponsiveness. B-157429, August 19, 1965.

"The decisions which have turned on this concept and which have allowed correction of omissions have generally involved bidding schedules soliciting bids on similar items. These decisions are based on the proposition that the bidder indicates his intent to bid a certain price for an item otherwise not bid upon by bidding the same amount for the same material in other parts of his bid. For example, in B-150318(2) [June 6, 1963], supra, although a bidder failed to bid on manholes in 4 of 78 subitems, whenever he bid on similar manholes in the other 74 items he bid the same price consistently. We upheld the decision to correct the four subitem price omissions and stated the rule that:

"* * * an apparent low bidder may correct a price omission alleged prior to award, on an item which might or might not be ordered under the resulting contract, if the erroneous bid itself establishes a definite and easily recognizable pattern of prices which clearly indicates not only that the alleged error is anomalous to the pattern but also that the allegedly intended figure is one which is solely compatible with the pattern."

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"Similarly, where a bidder failed to show a price on a subitem involving a particular type of upholstery, he was allowed to correct the bid by inserting a price for the subitem which the bidder had consistently bid on the same material elsewhere in the schedule. B-137971, December 9, 1958. The pattern of uniform pricing as established in the bidding documents is the essence of the exception which allows the determination and insertion of the intended bid price. B-146329, August 28, 1961.

* * * * *

"You further contend that the existence of the various specific admonitions to the bidder that failure to bid on an item would cause the bid to be rejected prohibits the corrective action taken by the contracting officer. * * * See B-150318(2), supra, where the bidder was allowed to correct a price omission although a provision of the IFB stated that failure to bid on all items would disqualify the bid."

In our view, the question for our decision is whether Auburn's bid provides clear evidence of such a pattern of uniform pricing. In each of the decisions cited above in 52 Comp. Gen. 604, supra, and in that decision itself, the bidder was permitted to insert an omitted price where he had bid consistently on the same item elsewhere in the invitation for bids and there was no basis upon which it could be concluded that the bid on the omitted item would be any different. In this case, the prices for items 0001 and 0027 calling for the same work as item 0014 were precisely the same. We believe it is reasonable to conclude that Auburn erroneously omitted a price for item 0014 and the price intended for the omitted item was intended to be the same as that bid in items 0001 and 0027. That this is the case is supported by the other 81 prices inserted in Auburn's bid representing 27 different work items priced for three separate 1-year periods. In all cases, Auburn bid the same price for each of the 1-year periods. Also, award was to be made on an "all or none" basis, and a price was omitted for only one of 84 items. Thus, we believe the very limited exception to the general rule enunciated in 52 Comp. Gen. 604, supra, may be invoked to permit Auburn to cure the omission. Auburn has submitted documentation to substantiate the existence of its

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mistake and has expressed its willingness to perform the contract, including the work called for under item 0014, with no increase in total bid. Therefore, we believe award should be made at this price if otherwise proper. See Slater Electric Company, B-183654, August 26, 1975, 75-2 CPD 126.

Con-Chen contends that Auburn has a regular policy of hiring illegal aliens. To the extent that this contention relates to the bidder's integrity, this is a question of responsibility, see 48 Comp. Gen. 769 (1969), primarily for the procuring agency; our Office, with certain exceptions not applicable here, no longer reviews bid protests concerning affirmative determinations of responsibility. And to the extent that the contention involves possible criminal activities, this is a matter properly for referral to the Department of Justice. Any information Con-Chen possesses concerning possible violation of Federal statutes should be forwarded to that Department for whatever action it deems appropriate. SINCO Electronics, B-187152, August 31, 1976, 76-2 CPD 209; Arsco, Inc., B-132740, January 28, 1976, 76-1 CPD 54.

For the reasons stated, Con-Chen's protest is denied.


Acting Comptroller General
of the United States